

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 27 1995

Billed Party Preference for InterLATA Calls)	CC Docket No. 92-77
Disclosures by Operator Service Providers Serving Public Phones)	DA 95-473

DOCKET FILE COPY ORIGINAL

Ameritech Reply

The Ameritech Operating Companies (Ameritech) respectfully submit the following reply to comments filed April 12, 1995, in the above-captioned proceeding. This phase of the proceeding addresses two proposals: (1) CompTel's proposal for a rate ceiling on operator service calls (CompTel proposal); and (2) the National Association of Attorneys General Telecommunications Subcommittee proposal that operator service providers serving public phones make certain disclosures through a voice-over if their rates exceed AT&T's rates (NAAG proposal). CompTel's proposal is framed as an alternative to billed party preference (BPP). The NAAG proposal is offered as an interim measure or alternative to BPP.

Ameritech continues to believe that BPP represents the best long-term solution to the problems that are plaguing consumers today. Nevertheless, because of the time it would take to implement BPP, the Commission must take interim measures to protect consumers from price gouging by operator service providers (OSPs). While neither the CompTel nor the NAAG proposal, as offered, properly balances the interests of consumers, OSPs, and

No. of Copies rec'd
List A B C D E

049

aggregators, the alternative proposal offered by Ameritech, which draws on elements of both proposals, represents a better approach. The Commission should adopt that proposal pending implementation of BPP.

A. In the Long-Run, BPP Would Best Serve the Interests of Consumers

In its comments, Ameritech argued that BPP remains the best long-term framework for true consumer-oriented operator services competition. Other comments support this conclusion. Indeed, even opponents of BPP give unwitting support to it. Oncor, for example, opposes rate ceilings on the ground that 0+ commission payments that OSPs must pay in a presubscription environment are driving up operator service prices. Oncor also acknowledges the reality that other OSPs have been loathe to admit: that some aggregators are more concerned with commission revenues than providing telephone services that meet the needs, including price expectations, of their customers and guests.¹ Indeed, Oncor asserts that commission payments, as opposed to consumer welfare, are the primary drivers of competition in the operator services marketplace today:

Oncor cannot pay a higher commission to the aggregator without recouping that added cost through higher rates. If Oncor refuses to meet an aggregator's commission demands, however, there almost always will be a competitor ready and willing to pay that commission. Therefore, Oncor is forced by natural market pressures to accede to the aggregator's demands for high commissions (and thus to charge a rate that will recover the expense).²

¹ Oncor Communications, Inc. (Oncor) Comments at 6.

² Oncor Comments at 7.

As the Commission has recognized, this is precisely why BPP is in the long-term interests of consumers. In the Further Notice of Proposed Rulemaking in this proceeding, the Commission observed that 0+ commission payments by OSPs exert substantial upward pressure on operator service rates and that BPP would eliminate the predicate for such payments. Equally important, the Commission found that BPP would refocus competition in operator services away from aggregators and towards consumers.³ As Oncor's comments demonstrate, only if this occurs will consumers derive the full benefits that a competitive marketplace can offer. Until then, the Commission will be forced to actively regulate the operator services market to protect consumers from price gouging and other abuses.⁴ For this reason, BPP is the only viable long-term solution for the operator services marketplace.

³ Billed Party Preference for 0+ InterLATA Calls, Further Notice of Proposed Rulemaking, 9 FCC Rcd 3320 (1994) (Further Notice) at paras. 12-13.

⁴ As the Commission recognized, BPP would also reduce AT&T's advantages over other OSPs in the operator services marketplace. The Commission noted that those advantages are accentuated by a presubscription system for aggregator phones and could be further heightened by AT&T's introduction of its CIID card. See Further Notice at paras. 14-15. Oncor agrees with the Commission that AT&T has significant advantages in competing for presubscriptions and that its CIID card has heightened those advantages. See Oncor Comments at 5, 7-8.

B. The Commission Should Take Immediate Action to Protect Consumers from Price Gouging

In its comments, Ameritech argued that, because BPP cannot be implemented until the late 1990s, the Commission should take interim measures to protect consumers from price gouging. Other comments underscore the need for such measures. Indeed, notwithstanding that the benchmarks proposed by CompTel are too high and too easily avoided, several OSPs oppose even these weak measures.⁵ Their apparent unwillingness or inability to price within even these benchmarks demonstrates the need for swift Commission action to protect consumers.

In opposing the CompTel and NAAG proposals, certain OSPs argue that they are nondominant carriers lacking market power and thus should not or cannot be rate-regulated.⁶ This argument misses the point. The Commission is obligated under the Communications Act to ensure that the rates of all common carriers are just and reasonable. While the Commission generally presumes that nondominant carriers are unable to sustain rates that are not just and reasonable, nondominant carriers are not exempt from the substantive provisions of Title II of the Act.⁷ If their rates are, in fact, unjust or unreasonable, those rates are unlawful. Nor is the Commission precluded from establishing benchmarks for OSP rates that do not apply to other

⁵ See Oncor Comments; Capital Network System, Inc. (CNS) Comments; U.S. Osiris Corporation (U.S. Osiris) Comments.

⁶ U.S. Osiris Comments at 4; CNS Comments at 3.

⁷ Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor (Competitive Carrier), Second Report and Order, 91 FCC 2d 59 (1982), Fourth Report and Order, 95 FCC2d 554 (1984).

nondominant carriers. The Commission historically did not treat all nondominant carriers alike, and the Commission may impose any special requirements it deems necessary on OSPs to ensure that their rates are just and reasonable.⁸ Thus, OSP arguments that they lack market power and therefore are immune from any form of rate regulation are wrong.⁹

Equally unavailing are OSP arguments that consumer protection measures are unnecessary since consumers have the ability to dial-around the presubscribed OSP.¹⁰ For one thing, many consumers do not dial-around and are consequently victimized by price gouging, as the NAAG petition evidences. Moreover, whether or not customers can dial-around high-priced OSPs is irrelevant. The fact remains that the rates of some OSPs are not just and reasonable, and the Commission needs to do something about it. Indeed, contrary to what one might have expected, Commission decisions giving consumers the ability to dial-around high-priced OSPs has not led OSPs to lower their rates. On the contrary, as Oncor notes in its comments, quite the opposite is occurring:

Where OSP rates in 1990 and 1991 probably could have sustained the proposed rate cap . . . massive volume reduction due to AT&T's actions has lead

⁸ Until the latter stages of the Competitive Carrier proceeding, the Commission subjected some nondominant carriers to streamlined regulation and others to forbearance. See, e.g., Competitive Carrier, Fourth Report and Order, 95 FCC 2d 554 (1983). Establishing benchmarks for OSP rates would be especially appropriate given that OSP pricing has been inconsistent with the Commission's assumption that rates of nondominant carriers are "effectively circumscribed by the costs and rates of dominant carriers[.]" Competitive Carrier, Second Report and Order, 91 FCC 2d at 69.

⁹ Ameritech offers no view on whether OSPs have or do not have market power. Suffice it to say that they have been able to sustain excessive rates by preying on consumers that, for whatever reason, do not use access codes to dial-around the presubscribed carrier.

¹⁰ U.S. Osiris Comments at 4; CNS Comments at 3.

[sic] to a market phenomena [sic] whereby OSP costs have risen and aggregators have demanded more money per call to make up for lost volume. . . . That cost and other costs have risen as volumes have gone down, and consequently rates have gone up.¹¹

Thus, the exorbitant OSP rates that are generating large numbers of consumer complaints and that are one of the principal driving forces behind BPP are going up, not down. The Commission must act now to protect consumers.

C. Ameritech's Proposal Better Balances the Interests of Consumers, OSPs, and Aggregators than either the CompTel or NAAG proposals

In its comments on the CompTel proposal, Ameritech argued that the benchmarks proposed by CompTel were too high and did not adequately protect consumers. Comments submitted by other parties corroborate this conclusion. For example, in explaining precisely how the benchmarks were chosen, the American Public Communications Council (APCC) states that the benchmarks are based in part on a sampling of 101 consumer complaints concerning OSP charges. According to APCC, 95 of the 101 complaints involved rates higher than the proposed benchmarks.¹² In other words, the proposed benchmarks have been designed to require cost support for rates that account for most OSP rate complaints at the FCC.

This is a far too lenient standard. The FCC's mandate under the Communications Act is to ensure that rates are just and reasonable. The number of consumer complaints that a rate precipitates is an inappropriate benchmark for implementing this mandate. Indeed, rates that are so high as

¹¹ Oncor Comments at 5-6.

¹² APCC Comments at 10-11.

to result in large numbers of consumer complaints are likely to be well above the level that is properly presumed just and reasonable. Insofar as the CompTel benchmarks are thus based on a faulty standard, these benchmarks are themselves fundamentally flawed.¹³

Conversely, the NAAG proposal, which would require OSPs to provide a voice-over if their rates exceeded AT&T's rates, even by a small amount, represents too strict a standard. The cost structures of all OSPs are not identical, and Ameritech believes a reasonable degree of leeway should be provided to those OSPs that face higher costs than AT&T to price accordingly. Moreover, the NAAG proposal would require all OSPs other than AT&T continually to monitor AT&T's rates and respond to each AT&T price reduction with a reduction of their own in order to avoid the voice-over requirement. Not only would that be unduly burdensome to OSPs, it would accord an unwarranted, special status to AT&T as the only carrier that would be free to raise its rates without having to concern itself with the possibility of a voice-over requirement.

In its comments, Ameritech proposed an alternative benchmark mechanism that more fairly balances the needs of consumers, OSPs, and aggregators. Specifically, Ameritech proposed that the Commission establish benchmarks for operator service calls by call type, time of day, and mileage bands. The ceiling in each category would be 120 percent of the highest rate

¹³ Sprint's comments further evidence that the benchmarks proposed by CompTel are too high. Sprint sets forth a table comparing its own rates with the CompTel benchmark rates. That table reveals that for collect, calling card, and third party calls, in particular, the CompTel benchmarks are well above Sprint's rates. For example, whereas Sprint's rates for a five-minute, 3000-mile call range from \$1.90 to \$3.75, CompTel proposes a benchmark of \$5.50.

charged by AT&T, MCI, or Sprint and would be adjusted annually based on existing tariffed rates.¹⁴

Ameritech's proposal would provide far more effective protection for consumers, while giving OSPs a reasonable level of pricing flexibility. For example, by establishing different benchmarks based on call-type, time-of-day, and distance, the Commission could establish benchmarks that reflect the significant variations in carrier rates today based on these factors. As Sprint's comments demonstrate, the charge for a nighttime or weekend calling card call may be less than half the charge for a daytime collect or third number call.¹⁵ A benchmark that fails to differentiate between these call types is thus bound to be ineffective. While different benchmarks for different call types would require somewhat more sophisticated monitoring of OSP rates, the Commission should not adopt a least common denominator approach that does not adequately protect consumers simply to make monitoring easier.

D. LECs Should Not be Responsible for Monitoring OSP Compliance with FCC Rate Ceilings

A number of commenters take issue with CompTel's proposal that local exchange carriers (LECs) play a role in monitoring OSP compliance with the operator service benchmarks by compiling and providing quarterly reports to the Commission. Ameritech agrees with these commenters.

¹⁴ Ameritech also proposed that OSPs seeking to price above the benchmarks would face an extremely high hurdle in justifying those rates. Specifically, Ameritech stated that tariffs proposing rates above the benchmark would be suspended for the maximum time permitted by law and would have to be accompanied by detailed cost support. That cost support, including the reasonableness of commission payments to aggregators, would be subject to strict scrutiny.

¹⁵ See Table Attached to Sprint Comments, supra, n. 12.

Ameritech is aware of no other instance in which LECs have been asked to play a role in ensuring that rates of other carriers are just and reasonable, and Ameritech does not believe that this is an appropriate role for LECs to play. Particularly as barriers to competitive entry into LEC markets are eliminated, and as barriers to LEC entry into interexchange markets are eliminated, it would be anomalous for the Commission to assign LECs a unique role in monitoring the behavior of OSPs in the marketplace.

Moreover, even if LECs provided the reports suggested by CompTel, that would not be an effective monitoring vehicle. Many OSPs do not use LECs as billing agents for operator service calls. Those OSPs would be able to evade rate scrutiny. Indeed, presumably any OSP that was using a LEC for billing would quickly switch to another billing agent if it was considering unlawfully charging rates that exceeded the benchmark. Thus, the monitoring role proposed by CompTel for LECs would be ill-advised and ineffective in any event.

A better way to ensure compliance by OSPs with rate ceilings would be for the Commission to step up audits of rates charged for operator service calls, publicize to consumers that they should report excessive rates, and prescribe stiff penalties for any OSP that unlawfully exceeds the Commission's prescribed benchmark. Indeed, OSPs that exceed the benchmark unlawfully and that fail to provide the required voice-over should be subject to two sanctions -- one for charging rates not contained in their tariff, and a second for exceeding the benchmark rates without providing the required voice-over. As the Pacific Companies note in their comments, under the Commission's proposed forfeiture guidelines in CI

Docket No. 95-6, violations of operator service requirements would be subject to a \$75,000 penalty.¹⁶ The Commission should adopt that proposal and impose equally strict penalties on OSPs that violate voice-over requirements.

E. The Voice-Over Suggested by NYNEX and APCC Should Not be Adopted

In their comments, both NYNEX and APCC argue that the Commission should require OSPs that exceed certain rate levels to provide a voice-over warning to consumers.¹⁷ Both, however, oppose the voice-over proposed by NAAG. In particular, they oppose that portion of the NAAG message that instructs callers to dial 1-800-555-1212 to find out how to reach their preferred carrier. Instead, they suggest that consumers should be instructed to look for the 800 number posted near the phone to obtain further rate information.

As noted in its comments, Ameritech is concerned that even the NAAG voice-over would confuse consumers, and it, therefore, proposed that voice-over only as a last resort and only in those rare instances in which an OSP would be able to justify above-benchmark rates. Ameritech is concerned that the alternative message proposed by NYNEX and APCC would be even more confusing. In essence, consumers would be told that the carrier serving the phone charges high rates and that they should look for a posting that might or might not be provided so that they could call an 800 number to find out just how high those rates are. That is a sure prescription for consumer

¹⁶ Pacific Bell and Nevada Bell Comments at 4.


¹⁷ NYNEX would require the warning if the OSP's rate exceeded AT&T; APCC would require the warning if the OSP exceeded CompTel's proposed benchmark rates.

confusion, anger, and frustration. Consumers who are told that the carrier serving a phone charges above-benchmark rates need to know how to reach another carrier, not how to obtain further rate information.

F. Conclusion

For the reasons stated above, and in Ameritech's comments, the Commission should adopt the Ameritech alternative to the NAAG and CompTel proposals, pending implementation of BPP. The Commission should impose strict sanctions on any OSP that charges rates in excess of its tariff or that fails to provide the required voice-over. The Commission should not require LECs to play a role in monitoring and enforcing OSP compliance with Commission-established benchmarks.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Gary L. Phillips", is written over a horizontal line.

Gary L. Phillips
Counsel for Ameritech
1401 H Street, N.W. Suite 1020
Washington, D.C. 20005

April 27, 1995

CERTIFICATE OF SERVICE

I, Toni R. Acton, do hereby certify that a copy of the foregoing Ameritech Reply has been served on the parties listed on the attached service list, by first class mail, postage prepaid, on this 27th day of April, 1995.

By:

A handwritten signature in cursive script, appearing to read "Toni Acton", written over a horizontal line.

Toni R. Acton

Michael J. Shortley, III
Attorney for Frontier Communications International, Inc.
180 South Clinton Avenue
Rochester, NY 14646

Connie Wightman
Consultant to U.S. Osiris Corporation
Technologies Management
P.O. Drawer 200
Winter Park, FL 32790-0200

U.S. Osiris Corporation
8828 Stemmons Freeway
Suite 212
Dallas, TX 75247

Robert F. Aldrich
Attorney for American Public Communications Council
Keck, Mahin & Cate
1201 New York Avenue, NW
Washington, DC 20005-3919

Randolph J. May
Timothy J. Cooney
Attorney for Capital Network System, Inc.
Sutherland, Asbil & Brennan
1275 Pennsylvania Avenue, NW
Washington, DC 20004-2404

Genevieve Morelli
CompTel
1140 Connecticut Avenue, NW
Suite 220
Washington DC 20036

Gregory M. Casey
Senior Vice President
Regulatory and Telephone Company Relations
Oncor Communications, Inc.
6707 Democracy Blvd.
Bethesda, MD 20817

Steven E. Swenson
Teltrust, Inc.
221 N. Charles Lindbergh Drive
Salt Lake City, UT 84116

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Attorneys for Sprint Corporation
1850 M Street, NW
Suite 1100
Washington, DC 20036

Mary McDermott
Linda L. Kent
Charles D. Cosson
United States Telephone Association
1401 H Street, NW
Suite 600
Washington, DC 20005

David Cosson
L. Marie Guillory
National Telephone Cooperative Association
2626 Pennsylvania Avenue, NW
Washington, DC 20037

William J. Balcerski
NYNEX Telephone Companies
1111 Westchester Avenue
White Plains, NY 10604

Mary J. Sisak
Donald J. Elardo
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006

John M. Goodman
Attorney for Bell Atlantic Telephone Companies
1133 20th Street, NW
Washington, DC 20036

Robert M. Lynch
Durward D. Dupre
J. Paul Walters, Jr.
Attorneys for Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, MO 63101

James P. Tuthill
Nancy C. Woolf
Attorneys for Pacific Bell and Nevada Bell
140 New Montgomery Street, Room 1523
San Francisco, CA 94105

James L. Wurtz
Margaret L. Garber
Attorneys for Pacific Bell and Nevada Bell
1275 Pennsylvania Avenue, NW
Washington, DC 20004

Douglas E. Neel
Vice President, Regulatory Affairs
MessagePhone, Inc.
5910 N. Central Expressway
Dallas, TX 75206

Mark C. Rosenblum
Robert J. McKee
Richard H. Rubin
Attorneys for AT&T Corporation
295 North Maple Avenue
Room 3254A2
Basking Ridge, NJ 07920

Kenneth F. Melley, Jr.
Vice President of Regulatory Affairs
U.S. Long Distance, Inc.
9311 San Pedro, Suite 300
San Antonio, TX 78216

Danny E. Adams
Steven A. Augustino
Attorneys for The Competitive Telecommunications Association
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Judith St. Ledger-Roty
Enrico C. Soriano
Attorneys for the Intellicall Companies
Reed Smith Shaw & McClay
1200 18th Street, NW
Washington, DC 20036

William E. Wyrrough, Jr.
Associate General Counsel
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0850

Glenn B. Manishin
Neil S. Ende
Blumenfeld & Cohen
Counsel for Gateway Technologies
1615 M Street, NW
Suite 700
Washington, DC 20036

Ernest D. Preate, Jr.
Attorney General
Commonwealth of Pennsylvania
c/o National Association of Attorney Generals
444 N. Capitol Street, NW
Washington, DC 20002

James E. Doyle
Attorney General
State of Wisconsin
c/o National Association of Attorney Generals
444 N. Capitol Street, NW
Washington, DC 20002

Kirk Smith, President
Operator Service Company
1624 10th Street
Lubbock, TX 79401

Randall B. Lowe
Jennifer L. Desmond
Piper & Marbury
Attorneys for One Call Communications, Inc.
1200 19th Street, NW
Washington, DC 20036